



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



320296

OCT 31 2001

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SR-6J

Peter Shagena, President
Chemical Recovery Systems, Inc.
8060 Rutherford
Detroit, Michigan 48228

Re: Request for Information Pursuant to Section 104 of CERCLA
for Chemical Recovery Systems Site in Elyria, Ohio

Dear Mr. Shagena:

This letter seeks your cooperation in providing information and documents relating to the insurance coverage of the Ohio and Michigan corporations identified as Chemical Recovery Systems, Inc. This inquiry is related to the Chemical Recovery Systems Superfund Site in Elyria, Ohio (Site). A Superfund site is a site contaminated with hazardous substances that may present a threat to human health or the environment. Attachment 1 is a summary of the information that United States Environmental Protection Agency (U.S. EPA or Agency) has about the Site and of the Agency's activities there.

U.S. EPA is investigating the release or threat of release of hazardous substances, pollutants or contaminants at the Chemical Recovery Systems Site and this investigation includes seeking information concerning the insurance coverage that the Site owners and operators obtained during their ownership or use of the Site property. U.S. EPA believes that you possess information that may assist the Agency in its investigation of the insurance coverage of the Site and the entities that operated there.

U.S. EPA is addressing this inquiry to you as the President of Chemical Recovery Systems, Inc., a Michigan corporation. Chemical Recovery Systems, Inc., an Ohio corporation, was a wholly owned subsidiary of the Michigan corporation of the same name. U.S. EPA is inquiring about the insurance coverage of both the Site operators and its owners. If copies of the policies are available to you, or you know the location of the policies, the Agency asks that you provide either a copy of the policy or its location. If the policies are no longer available, we ask that you provide as much information about the insurance policies as possible, such as the insurance carrier, type of policy, period of coverage, agent, claims against the policy.

We encourage you to give this matter your immediate attention. Please provide a complete and truthful response to this Information Request and its questions in Attachment 2 within 30 days of your receipt of this letter. Instructions to guide you in the preparation of your response are in Attachment 3. Definitions of the terms used in this Information Request and in the Questions are in Attachment 4.

You may consider the information confidential that U.S. EPA is requesting. Under CERCLA you may not withhold information on that basis, but you may ask U.S. EPA to treat the information as confidential. To request that the Agency treat your information as confidential, you must follow the procedures outlined in Attachment 5, including the requirement that you support your claim for confidentiality.

We make this request under the Federal Superfund law (the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, commonly referred to as CERCLA or Superfund). The Superfund law gives U.S. EPA the authority to assess the threats to human health and the environment posed by contaminated Sites and to cleanup those Sites. Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), U.S. EPA has information-gathering authority that allows the Agency to require persons and corporations to furnish information or documents. Attachment 6 is a summary of the legal authority.

Compliance with this Information Request is mandatory. The Superfund statute provides that failure to answer the questions fully and truthfully, and within the prescribed time frame, can result in an enforcement action and penalties. Other statutes provide that the submission of false, fictitious statements or misrepresentations can result in sanctions.

The U.S. EPA has the authority to use the information that it requests in an administrative, civil or criminal action.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

Return your response to U.S. EPA within 30 days to:

Margaret Herring
U.S. Environmental Protection Agency
Remedial Enforcement Support Section
77 West Jackson Boulevard, Mail Code SR-6J
Chicago, Illinois. 60604-3590

If you have any legal questions, please call Thomas Nash, Assistant Regional Counsel, at 312 886-0552. Address all other questions to Margaret Herring at 312 886-6239.

We appreciate your assistance and look forward to your prompt response to this Information Request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Wendy L. Carney", with a long, sweeping horizontal line extending to the right.

Wendy L. Carney, Chief
Remedial Response Branch #1

- Attachments
1. Site History
 2. Questions
 3. Instructions
 4. Definitions
 5. Confidential Business Information
 6. Legal Authority
 7. Small Business Administration

Attachment One

SITE HISTORY

The Chemical Recovery Systems Site ("CRS Site") is located at 142 Locust Street in Elyria, Ohio. The CRS Site is bordered on the west by the East Branch of the Black River, to the north and east by the Engelhard (formerly Harshaw) Chemical Company, and to the south by M&M Aluminum Siding Company. The CRS Site is located in a predominantly industrial and commercial area near the central business district of Elyria. The CRS Site consists of a four acre parcel that is currently leased to M&M Aluminum which uses the Site property to store aluminum siding. Most of the four acre parcel is empty. Two buildings are currently on the CRS Site: a former warehouse and office building and the masonry shell of a building that housed a Rodney Hunt still. These buildings are located in the southeast corner of the CRS Site. The foundation of a building that housed a Brighton still is located in the northeast corner of the CRS Site. The Site is fenced on all sides except the side bounded by the East Branch of the Black River.

Beginning no later than the 1940s the CRS Site was used for commercial and industrial purposes such as a coal yard. During the 1950s, Harshaw Chemical briefly leased the CRS Site to store saggars. In 1960, Russell Obitts leased the CRS Site property and relocated his existing business, the Obitts Chemical Company, which reclaimed spent organic solvents, to the CRS Site property. Later Russell Obitts and Dorothy Obitts purchased this property.

In 1974, Chemical Recovery Systems, Inc., a Michigan corporation ("CRS, Inc., - MI"), assumed operations at the CRS Site through a stock purchase agreement with the Obitts Chemical Company. In a separate agreement CRS, Inc., - MI leased the CRS Site property from Russell Obitts and Dorothy Obitts in a lease agreement with an option to purchase. A year later CRS, Inc., - MI exercised its purchase option. CRS, Inc., - MI continued operations at the CRS Site until 1981.

Operating as Obitts Chemical Company and then as CRS, Inc., - MI the facility located on the Site received spent organic solvents from industrial facilities and reclaimed the solvents through distillation processes. Both operators hauled contaminated solvents to the Site facility by their own tanker trucks and stake trucks hauling 55 gallon drums. Spent solvents were stored in above ground tanks and 55 gallon drums. Soil contamination occurred through leakage and spills. Spent solvents that were transported to the CRS Site include, but are not limited to, the following: acetone, hexane, isopropyl alcohol, methylene ethyl ketone (MEK), tetrachloroethane, toluene, trichloroethane, and xylene. Analysis of samples that U.S. Environmental Protection Agency ("U.S. EPA") collected on November 26, 1979, at the CRS Site detected PCE, ethyl benzene, and naphthalene. A solvent sample collected on February 5, 1980 contained toluene,

Attachment 1: Site History

Site: Chemical Recovery Systems, Inc., Elyria, Ohio

ethyl benzene, xylene, and naphthalene. During a visit on February 5, 1980, by U.S. EPA to the CRS Site an employee of the facility identified specific solvents reclaimed as well as paint solvents generally.

Because the CRS Site posed imminent danger to the local population and the environment, U.S. EPA initiated an action under the Resource Recovery and Conservation Act ("RCRA"). On October 7, 1980, the U.S. Department of Justice ("U.S. DOJ"), on behalf of U.S. EPA, filed an action against CRS, Inc., - MI in the U.S. District Court, Northern District of Ohio, to abate an imminent and substantial endangerment to public health and the environment from the CRS Site. On July 12, 1983, The District Court entered a Consent Decree that required CRS, Inc., - MI to take these and other actions: excavate all visibly contaminated soils identified during a joint U.S. EPA and CRS, Inc., - MI inspection; excavate the perimeter of the Brighton still to a specified depth and distance; dispose of the excavated soil at an approved waste disposal site; backfill the excavated areas; and grade the CRS Site. After its inspection of the CRS Site November 7, 1983, U.S. EPA concluded that CRS, Inc., - MI was in compliance with the July 12, 1983 Consent Decree.

Because hazardous substances released at the CRS-Site remain in the soil and groundwater at elevated levels, U.S. EPA is now taking response actions, under the authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and its amendments. These actions address potential risk to human health and the environment at the CRS Site.

Attachment Two
Questions for Peter Shagena

1. Identify all persons consulted in the preparation of the answers to these questions.
2. Identify all documents consulted, examined, or referral to in the preparation of the answers to these questions and provide copies of all such documents.
3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any question or who may be able to provide additional responsive documents, identify such persons.
4. Identify all persons including respondent's employees or former employees, who have knowledge or information about the insurance coverage of the Site and the facilities which operated on that Site and generation, use, treatment, storage, disposal or other handling of material at or transportation of materials to the Site.

Insurance

The questions in this section address the insurance policies carried by or on behalf of Chemical Recovery Systems, Inc., an Ohio corporation, Chemical Recovery Systems, Inc., a Michigan corporation, and the property at 142 Locust Street, Elyria, Ohio during the period that Chemical Recovery Systems, Inc. exercised its option for a contract purchase of the property.

5. List all agreements or contracts, including but not limited to insurance policies, which may, or may have, indemnified Chemical Recovery Systems, Inc., an Ohio corporation (CRS-OH) and its present or past owners, operators, partners, and/or shareholders, with respect to any costs that may accrue due to U.S. EPA's response action conducted at the Site.
 - a. Provide a copy of each such agreement, contract, and insurance policy.
 - b. For all such insurance policies which respondent or CRS-OH had from 1973 to the present, state: the name of the insurance company providing the insurance, the years each policy was in effect, the type of coverage provided, the coverage amount, and the agent, or agency, who serviced the policy locally.
 - c. If the policy is not available provide a detailed description of the policy including the insurer, type of coverage, the coverage amount, years the policy was in effect, the agent or agency who serviced the policy locally.
6. State how the price paid to the Insurance Company for the insurance of CRS-OH was determined.

Attachment 2: Questions

Site: Chemical Recovery Systems, Inc., Elyria, Ohio

7. State whether any claim or claims have been made to any insurance company for any loss or damage related to operation at the Site and, if so, identify each claim by stating the name of the claimant, the name and address of the insurance company, policy number, named insured on the policy, claim number, date of claim, amount of claim, the specific loss or damage claimed, the current status of the claim, and the amount, date and recipient of any payment made on the claim. Provide a copy of the claim and related documentation, including final settlement.
8. Identify all property, pollution and/or casualty liability insurance policies held by CRS-OH from 1970 on. Identifying such policies, state the name and address of each insurer and of the insured, the amount of coverage under each policy, the commencement and expiration dates for each policy, whether or not the policy contains a "pollution exclusion" clause, and whether the policy covers or excludes sudden, non-sudden or both types of accidents. In lieu of providing this information, you may submit complete copies of all relevant insurance policies.
9. Provide a list of claims made against any of the policies listed from the previous question, including policy number, name of insurance carrier, name of person within insurance company to contact regarding claims, the claim's number, a brief description of the claim and whether monies were paid out by the carrier in response to a claim made, including a compromise of settlement of the claim.
10. Provide copies of all correspondence, internal and external memorandum regarding the claims listed in the previous question.

Attachment Three

INSTRUCTIONS

1. Answer each of the questions in this Information Request separately.
2. Precede each answer with the number of the question to which it corresponds.
3. In answering each question, identify all persons and contributing sources of information.
4. You must supplement your response to U.S. EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify U.S. EPA as soon as possible.
5. For any document submitted in response to a question, indicate the number of the question to which it responds.
6. You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of source.
7. Your response should be accompanied by a notarized affidavit from a responsible company official or representative which states that a diligent record search has been completed, and that there has been a diligent interviewing process with all present and former employees who may have knowledge of your operations, use of hazardous substances, any releases or spills, and any storage, treatment, disposal or handling practices. To the extent that any information you provide is based on your personal knowledge, or the personal knowledge of your employees, agents, or their representatives, this information shall be in the form of a notarized affidavit. In lieu of a notarized affidavit, you may submit the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

8. If any of the requested documents have been transferred to others or have otherwise been disposed of, identify each document, the person to whom it was transferred, describe the circumstances surrounding the transfer or disposition, and state the date of the transfer or disposition.
9. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Attachment 4.

Attachment Four

DEFINITIONS

1. As used in this letter, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa.
2. The term **person** as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
3. **The Site** referenced in these documents shall mean the **Chemical Recovery Systems, Inc., Site** located at 142 Locust Street, Elyria, Ohio.
4. The term **hazardous substance** shall have the same definition as that contained in Section 101(14) of CERCLA, including any mixtures of such hazardous substances with any other substances, including petroleum products.
5. The term, **pollutant or contaminant**, shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.
6. The term **release** shall have the same definition as that contained in Section 101(22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.
7. The term **identify** means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
8. The term **identify** means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g. corporation, partnership, etc.), organization, if any, and a brief description of its business.
9. The term **identify** means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.
10. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 CFR Part 300 or 40 CFR Part 260-280, in which case the statutory or regulatory definitions shall apply.

Attachment Five

CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information confidential that the U.S. Environmental Protection Agency (U.S. EPA or Agency) is requesting. You can not withhold information or records upon that basis. The Regulations at 40 C.F.R. Part 2, Section 200 *et seq.*, require that the U.S. EPA afford you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. Section 2.203(b). Information covered by such a claim will be disclosed by the U.S. EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. [See 41 Federal Register 36902 *et seq.* (September 1, 1976); 43 Federal Register 4000 *et seq.* (December 18, 1985).] If no such claim accompanies the information when the U.S. EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of Comprehensive Environmental Response Compensation Liability Act (CERCLA), because, as stated in Section 104(e)(7) (ii), certain categories of information are not properly the subject of a claim of confidential business information.

If you wish U.S. EPA to treat the information or record as *confidential*, you must advise U.S. EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph, and sentence. You must make a **separate** assertion of confidentiality for **each response and each document** that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope *confidential*, and identify the number of the question to which the envelope's contents are the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;
2. The measures that you have taken to guard against disclosure of the information to others;
3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;
4. Whether U.S. EPA or other federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination.

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2. The measures that you have taken to guard against disclosure of the information to others;
3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;
4. Whether U.S. EPA or other federal agency has made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination.

Attachment 5: Confidential Business Information
Site: Chemical Recovery Systems, Inc., Elyria, Ohio

5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information.
6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. 2.201(i). If you make this assertion, explain how the disclosure would tend to lessen the ability of U.S. EPA to obtain similar information in the future.
7. Any other information that you deem relevant to a determination of confidentiality.

Please note that, pursuant to 40 C.F.R. 2.208(e), **the burden of substantiating confidentiality rests with you**. The U.S. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that U.S. EPA may maintain their confidentiality pursuant to 40 C.F.R. 2.205(c). If you do not identify this information and documents as *confidential*, your comments will be available to the public without further notice to you.

Attachment Six

DESCRIPTION of LEGAL AUTHORITY

The federal **Superfund** law (the Comprehensive Environmental Response, Compensation and Liability Act), 42 U.S.C. § 9601, *et seq.*, (commonly referred to as **CERCLA** or Superfund), gives the U.S. EPA the authority to, among other things: 1) assess contaminated sites; 2) determine the threats to human health and the environment posed by each site; and 3) clean up those sites in the order of the relative threats posed by each.

Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604 (e)(2), U.S. EPA has broad information-gathering authority which allows U.S. EPA to require persons to furnish information or documents relating to:

- A. The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility;
- B. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;
- C. The ability to pay the costs of the clean-up.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in an enforcement action by U.S. EPA pursuant to Section 104(e)(5) of CERCLA. This section also authorizes an enforcement action with similar penalties if the recipient of the Request does not respond and does not justify the failure to respond. Other statutory provisions (18 U.S.C. Section 1001) authorize separate penalties if the responses contain false, fictitious, or fraudulent statements. The U.S. EPA has the authority to use the information requested in this Information Request in an administrative, civil, or criminal action.